

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RECLAIM THE RECORDS and BROOKE
SCHREIER GANZ,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
VETERANS AFFAIRS, including its
Components, the Office of General Counsel,
the Veterans Benefits Administration,
and the Veterans Health Administration,

Defendant.

18 Civ. 8449 (PAE)

**ANSWER TO AMENDED
COMPLAINT**

The United States Department of Veterans Affairs (“VA” or “Defendant”), by its attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, hereby answers the Amended Complaint (Dkt. No. 2, the “Amended Complaint”), filed by Plaintiffs Reclaim the Records and Brooke Schreier Ganz (collectively, “Plaintiffs”) as follows:

1. Paragraph 1 consists of a characterization of this action to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 1, except admits that this is an action brought pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552 *et seq.*, seeking the production of records from Defendant.

2. Paragraph 2 consists of a characterization of this action to which no response is required.

JURISDICTION AND VENUE

3. Paragraph 3 consists of legal conclusions to which no response is required.

4. Paragraph 4 consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 4.

5. Paragraph 5 consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations, and denies that Plaintiffs exhausted administrative remedies as to some or all of the claims made in this action.

PARTIES

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6.

7. Defendant admits the allegations of Paragraph 7.

FACTUAL BACKGROUND

8. Defendant admits the allegation in Paragraph 8 that Plaintiff Ganz submitted a FOIA request by email to the VA on or about September 20, 2017 (the “Request”). The remainder of the allegations in Paragraph 8 consists of characterizations of the Request, and Defendant respectfully refers the Court to the Request for a true and accurate representation of its contents.

9. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9, except denies the allegations as to the requirements of FOIA and respectfully refers the Court to the statutory language for a true and accurate representation of its contents.

10. Defendant admits the allegation in Paragraph 10 that the VA denied the Request on or about January 9, 2018. The remainder of the allegations in Paragraph 10 consists of characterizations of the denial letter, and Defendant respectfully refers the Court to the denial letter for a true and accurate representation of its contents.

11. Defendant admits the allegations of Paragraph 11.

12. Defendant admits the allegation of Paragraph 12 that the VA responded to Plaintiff's appeal on or about April 26, 2018. The remainder of the allegations in Paragraph 12 consists of characterizations of the VA's April 26, 2018 response, and Defendant respectfully refers the Court to the response for a true and accurate representation of its contents.

13. Defendant admits the allegations in Paragraph 13 that the Veterans Health Administration ("VHA") issued a denial of the Request on or about July 26, 2018. The remainder of the allegations in Paragraph 13 consists of characterizations of the denial letter, and Defendant respectfully refers the Court to the denial letter for a true and accurate representation of its contents.

14. Defendant denies the allegations of Paragraph 14.

15. Defendant admits the allegations of Paragraph 15.

16. Defendant admits the allegations of Paragraph 16.

17. Defendant denies the allegations of Paragraph 17.

CAUSE OF ACTION

18. Defendant denies the allegations of Paragraph 18.

REQUEST FOR RELIEF

19. The remainder of the Amended Complaint consists of Plaintiffs' prayer for relief, to which no response is required. To the extent a response is required, Defendant denies that Plaintiffs are entitled to any relief requested in their prayer for relief, or any relief whatsoever.

DEFENSES

Any allegations not specifically admitted, denied, or otherwise responded to are hereby denied. In further response to the Amended Complaint, Defendant avers as follows:

FIRST DEFENSE

The Amended Complaint fails to state a claim for which relief can be granted.

SECOND DEFENSE

The Amended Complaint should be dismissed because the Request calls for an unreasonably burdensome search.

THIRD DEFENSE

Defendant has exercised due diligence in processing the Request and exceptional circumstances exist that necessitate additional time for Defendant to continue its processing of the Request. *See* 5 U.S.C. § 552(a)(6)(C).

FOURTH DEFENSE

Some or all of the requested information is exempt from disclosure. *See* 5 U.S.C. § 552(b).

FIFTH DEFENSE

The Request fails, in whole or in part, to reasonably describe the requested records under 5 U.S.C. § 552(a)(3)(A).

SIXTH DEFENSE

The Court lacks subject matter jurisdiction over Plaintiffs' requests for relief that exceed the relief authorized under FOIA, 5 U.S.C. § 552.

SEVENTH DEFENSE

Plaintiffs' claims should be denied to the extent they failed to exhaust administrative remedies.

EIGHTH DEFENSE

Plaintiffs are not entitled to attorney's fees under 5 U.S.C. § 552(a)(4)(E).

NINTH DEFENSE

Plaintiffs are not entitled to a waiver of fees under FOIA.

TENTH DEFENSE

This action should be dismissed or transferred to the extent that venue is improper pursuant to 5 U.S.C. § 552(a)(4)(B).

Dated: December 17, 2018

Respectfully submitted,

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Southern District of New York
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